Appl. No. 10/724,269
Response to Office Action Mailed June 22, 2007

Patent/Docket No. 26530.91 (IDR-666)
Customer No. 000027683

REMARKS

Claims 1-28 are pending. Reconsideration and allowance of all pending claims are respectfully requested in light of the following remarks.

Rejections under 35 U.S.C § 103(a)

Claims 1-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,966,547 to Hagan et al. ("Hagan") in view of Parlante (Linked List Basics) and U.S. Patent No. 5,319,778 to Catino ("Catino"). Applicant respectfully traverses the subject rejection on the grounds that the cited references are defective in establishing a prima facie case of obviousness with respect to the pending claims.

As the PTO recognizes in MPEP § 2142:

> The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.

It is submitted that, in the present case, the Examiner has not factually supported a prima facie case of obviousness for the following reasons.

The Hagan, Parlante, and Catino references cannot be applied to reject independent claims 1, 11, and 15 under 35 U.S.C. § 103 because, even when combined, the references do not teach the claimed subject matter. In particular, the cited combination fails to teach or suggest at least the following element as recited in independent claim 1, as amended:

> executing an add to end function for adding a new element to the end of the queue even when the queue is in a locked state immediately prior to execution of the add to end function in which a queue head pointer is null and a queue tail pointer does not point to the queue head pointer.

The Examiner has conceded that the combination of Hagan and Parlante fails to teach this element, for which Catino, at column 7, lines 25-47, is cited. Applicant respectfully traverses the Examiner's position for at least the following reasons. First, Catino's teaching of the head pointer in a locked state and the tail pointer in a "potentially lockable state" does not read on "the queue is in a locked state," which phrase is explicitly defined in the claims as comprising the state in which "[the] queue head pointer is null and [the] queue tail pointer does not point to the queue head pointer." Catino explicitly states that the tail pointer "is only locked when there is one list element in the linked list. In other words, there is no successor element since there is only one list element in the linked list." Col. 7, ll. 33-36 (emphasis added). As has been previously noted, Applicant's claimed invention covers the situation in which the "add to end" function is executed while the queue is locked because another function is

Appl. No. 10/724,269
Response to Office Action Mailed June 22, 2007

Patent/Docket No. 26530.91 (IDR-666)
Customer No. 000027683

accessing the queue to add/remove an element therefrom, as evidenced by the head pointer being null and the tail pointer not pointing to the head pointer (i.e., the queue is not empty). This situation is clearly not addressed by cited Catino passage.
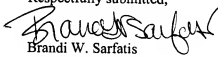
Additionally, the portion of Catino cited by the Examiner is presented in the context of adding an element to the beginning (or head) of the queue (see Catino, col. 6, l. 40 – col. 8, l. 46), whereas claim 1, as amended, expressly recites addition of an element to the end of the queue.

Thus, for this mutually exclusive reason, the Examiner's burden of factually supporting a *prima facie* case of obviousness with respect to independent claim 1 has clearly not been met, and the rejection under U.S.C. §103 should be withdrawn. Independent claims 11 and 15 include limitations similar to those of claim 1 and are therefore also deemed to be in condition for allowance for at least the same reasons as claim 1. Claims 2-10, 12-14, and 16-28 depend from and further limit independent claims 1, 11, and 15, and are therefore also deemed to be in condition for allowance for at least that reason.

Conclusion

It is clear from the foregoing that all of the pending claims are in condition for allowance. An early formal notice to that effect is therefore respectfully requested.

Respectfully submitted,

Brandi W. Sarfatis
Registration No. 37,713

Dated: 8/29/07

HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 214/651-5896
Facsimile: 214/200-0948
Client Matter No.: 26530.91/IDR-666

D-1559729_1.DOC